



STATE OF MAINE
DEPARTMENT OF CONSERVATION
MAINE LAND USE REGULATION COMMISSION
STATE HOUSE STATION
AUGUSTA, MAINE
04402-1001

FILE # 13-000164

SUBDIVISION PERMIT SP 4055

PERMIT

The staff of the Maine Land Use Regulation Commission, after reviewing the application and supporting documents submitted by Vista Development, Inc. for Subdivision Permit SP 4055, finds the following facts:

1. Applicant: Vista Development Inc.
Attn: Joshua Davis
P.O. Box 297
Stratton, ME 04982-0297
2. Date of Completed Application: October 13, 2004
3. Location of Proposal: Coplin Plantation, Franklin County
Lot #50 on Map 9 of the Coplin Plantation Property Maps
Wyman Twp, Franklin County
Lot 5 on Plan 01 of MRS Map FR004
4. Zoning D-RS (Residential Development Subdistrict)
P-WL1 (Wetland Protection Subdistrict)
5. Size of Parcel: 13.19 acres

Proposal

6. The applicant proposes to create a Level I subdivision in Coplin Plantation with 9 residential house lots ranging in size from 0.93 acres to 3.47 acres. The ninth lot, is located on the P-AR zoned portion of the parcel and was sold prior to this subdivision. Consequently, the lot is not part of the subdivision permit but will be counted as a lot in the total number of lots involved in the subdivision. The total acreage for the subdivision is 13.19 acres, 11.87 acres of which is zoned D-RS and will be divided into 8 individually owned parcels and 1.32 acres of which is zoned P-WL1 and will be owned in common by the subdivision homeowner's association. The subdivision would be accessible from the Hunter Hill Road and would be served by one proposed interior road.
7. Dwellings built within the proposed subdivision would be served by individual sewage disposal systems and individual wells. Fire protection will be provided by the town of Stratton. Solid waste disposal would be accommodated by the Eustis/Stratton local solid waste landfill.



Background

8. Joshua Davis purchased the 16.7 acre parcel from Robert E. Irish in December of 2003.
9. The petitioner submitted a request for advisory ruling (AR-04-7) to the Commission staff in February 2004 regarding the extent of the P-AR Subdistrict in relation to the petitioner's parcel. The staff responded in March 2004, concluding that, based on the most recent data available from the Maine Geological Survey, the P-AR Subdistrict boundaries in this area were not accurately identified. According to the Significant Sand and Gravel Aquifer Maps for the Stratton and Black Nubble Quadrangles, published in 2001, the P-AR is not as extensive as it was mapped on the Commission's Land Use Guidance Maps for Coplin Plantation and Wyman Twp. and only a portion of the parcel owned by Vista Development Inc. should be included in the P-AR Aquifer Protection zoning district. The remainder of the parcel owned by Vista Development Inc. (13.19 acres) does not belong within the P-AR and, other than the wetland areas, would be more appropriately zoned as M-GN General Management Subdistrict. However, the petitioner proposed that rather than zoning the portion of the parcel that lies outside of the P-AR Aquifer Protection Subdistrict as M-GN General Management Subdistrict that it be zoned as D-RS Residential Development Subdistrict.
10. Zoning petition ZP692, issued to the applicant in August of 2004, authorized a change in the subdistrict boundaries for 11.87 acres of the parcel from P-AR to D-RS. The P-WL2 zoned portion of the property was rezoned as P-WL1 (1.32 acres) based on information provided by the Department of Inland Fisheries and wildlife that classified the wetland as significant wildlife habitat.
11. Joshua Davis sold a 3.47 acre parcel on October 20, 2004 to Paul C. Cohen. This lot is currently zoned P-AR and is not part of the subdivision but will be counted toward the number of lots involved in the subdivision.

Design Considerations

12. The proposed residential house lots range in size from 0.93 acres to 2.38 acres and have between 100 feet to 512 feet of road frontage.
13. The proposed subdivision lots are characterized by slopes of 0 to 15 percent. The parcel has not been harvested recently for timber.
14. Building envelopes for the lots, as identified on the draft plat submitted with the application, maintain a 50 foot setback from the roads and a 15 foot setback from property lines. The building envelopes are set as far away as possible from the P-WL1 zoned portion of the property as well as the 250 foot buffer around the P-WL1.
15. All lot owners will be members of and collectively control an incorporated homeowners association, which the applicant shall incorporate prior to the first lot sale. The homeowners association includes Bylaws and a Declaration of Covenants. Among other obligations, the Association shall be obligated to provide for the continued maintenance of all private roads

and rights-of-way in the Meadow Brook Subdivision, as recorded in the Franklin County Registry of Deeds. The open space lot owned in common by the Association shall be preserved in its substantially unaltered state in perpetuity. The open space lot may be used only for purposes intended to conserve land and preserve important natural features of the site.

16. Deed covenants pertaining to all lots within the proposed subdivision include the following restrictions:
 1. Commercial Uses Prohibited: The above described lots shall not be used for any commercial purpose whatsoever, but solely for private single-family residential purposes.
 2. Subdivisions: The above described lots shall not be further subdivided, sold or leased in parcels.
 3. One Residential Dwelling Only: No more than one principal building designed for single family residential purposes shall be erected on the above described lots, provided that the foregoing restrictions shall not prevent the erection of buildings whose use is auxiliary to the principal building, including garages, buildings for storage or gardening and the like, and greenhouses.
 4. Well And Sewage Disposal: All wells and sewer systems will comply with State of Maine codes.
 5. Meadow Brook Owners Association: Grantees, as owners of property comprising the Meadow Brook Subdivision, agree for themselves, their heirs and assigns, to join the nonprofit corporation operated by and for the owners of lots comprising this subdivision and to pay their proportionate share of the Association's annual maintenance charges or special assessments for expenses incurred in maintaining and improving the private road delineated on the Meadow Brook Subdivision Plan and in providing other reasonable and necessary services of mutual benefit to such lot owners. All annual special assessments or maintenance charges shall accrue to the benefit of and may be enforced through legal process by the incorporated association or property owners of the Meadow Brook Subdivision Plan.
 6. Restrictions: The grantor, Vista Development, Inc., creates no common scheme hereby with respect to any remaining land, and the above described covenants do not apply to land retained by grantor, Vista Development, Inc., and not shown as numbered lots on the Meadow Brook Subdivision Plan except as follows: All parcels conveyed by grantor, Vista Development, Inc., which are not a part of the Meadow Brook Subdivision but which include a right of way over the private road known as Meadow Brook Road shall be subject to the requirement that they join the Meadow Brook Subdivision Association and contribute their proportionate share of the Association's annual maintenance charges or special assessments incurred in maintaining and improving Meadow Brook Road.

17. A Class B medium intensity soil survey was conducted on the subdivision parcel in order to describe the soils within the site and to identify potential development limitations of the soils. The survey identified the major soils to be Crogan Series. These soils are found to be suitable soils for development. The on-site soils investigation indicates that a sufficient area of suitable soils exists on each lot for installation of individual sewage disposal system.
18. There are 1.32 acres of mapped P-W1.1 wetland within the subdivision. No development is proposed to be located within this wetland. A 250 foot undisturbed buffer has been identified around the wetland as well. The only development activity allowed within this buffer is the placement of individual wells to serve the lots. The placement of these wells can not result in the disturbance of any trees or vegetation.
19. The applicant proposes a Drainage, Stabilization and Erosion Control Plan to minimize the erosion and sedimentation of soil disturbed during construction of the subdivision road. Erosion control measures will be implemented as follows: (a) development of a careful construction sequence, (b) rapid revegetation of denuded areas to minimize the period of soil exposure, (c) rapid stabilization of drainage paths to avoid rill and gully erosion, (d) use of onsite measures such as hay bales, check dams, and erosion control mesh to capture sediment, and (e) use of best management practices to prevent long term erosion and sedimentation.

All erosion control devices, including staked hay bales and drainage structures, will be installed prior to the commencement of work. Topsoil that is stripped from construction areas will be stockpiled away from drainage swales and will be temporarily seeded and mulched within 7 days. During grubbing operations, stone check dams will be installed at any evident concentrated flow discharge points. All disturbed areas will be promptly seeded and mulched, and if seeding does not catch to 90%, the area will be reseeded again until revegetated.

Review Agency Comments

20. The Maine State Soil Scientist, Dave Rocque, reviewed the proposal and his primary concern is with groundwater quality. The soils are sand and gravel deposits which are potential aquifer soils. Dave Rocque recommends requiring that all septic systems be installed such that the bottom of each leachfield is at least 6 inches above the clean sand and gravel layer. This should not be a problem as the test pit logs indicate that there is 24 or more inches of loamy sand and a seasonal water table at 20-36 inches. As a protection for the groundwater, the loamy sand would assure a bio-mat formation and provide treatment of effluent. Dave Rocque also suggests limiting the depth of road ditches so that they are above the seasonal water table to make stabilization easier and more effective.
21. The Maine Department of Inland Fisheries and Wildlife voiced their concerns during the rezoning phase of this subdivision proposal. The Maine Department of Inland Fisheries and Wildlife recommended that the wetlands identified by Robert Vile along the eastern boundary of the parcel be zoned as P-W1.1 Wetland Protection Subdistrict due to the fact

that they meet the MDIFW management guidelines for moderate and high value Waterfowl and Wading Bird Habitat. Further, MDIFW recommended that a 250 foot undisturbed buffer starting at the edge of the identified wetland be required. The only development that would be allowed within this 250 foot undisturbed buffer is the development of individual wells and the construction of these wells must not result in the disturbance of vegetation within the buffer.

22. Daniel B. Locke, Hydrogeologist, of the Maine Geological Survey reviewed the proposal and recommends that the applicant examine carefully how these homes are to be heated. He states that if electricity or propane are to be used, then there is little to no concern for possible impacts to ground water as a result of heating systems. However, if fuel oil furnaces are to be used in the homes, then the question comes up of how the fuel is to be stored. Heating oil tanks that are installed outside are more likely to have a shorter lifespan and suffer catastrophic failure due to snow and ice coming off roofs. Therefore, Daniel Locke recommends that home heating oil tanks be installed within the dwelling or in the dwelling basement. He also recommends that the applicant consider the use of double walled home heating oil tanks.
23. The Franklin County Commissioners had no comments on this proposal.
24. The Town Assessor of Coplin Plantation had no comments on this proposal.

Review Criteria

25. Under provisions of Section 10.21.11.3.e.(13) of the Commission's Land Use Districts and Standards, Level I subdivision are an allowed use within the D-RS Residential Development Subdistrict with a permit.
26. Under the provision of Section 685-B(4) of the Commission's Statutes, 12 M.R.S. A., the Commission shall approve no application, unless:
 - a. adequate technical and financial provision has been made for complying with requirements of the State's air and water pollution control and other environmental laws, including minimum lot size laws, site location of development laws, and natural resource protection laws, and those standards and regulations adopted with respect thereto;
 - b. adequate provision has been made for loading, parking and circulation of land, air and water traffic, in, on and from the site, and for assurance that the proposal will not cause congestion or unsafe conditions with respect to existing or proposed transportation arteries or methods;
 - c. adequate provision has been made for fitting the proposal harmoniously into the existing natural environment in order to assure there will be no undue adverse effect on existing uses, scenic character, and natural and historic resources in the area likely to be affected by the proposal;

- d. adequate provision has been made to assure that the proposal will not cause unreasonable soil erosion or reduction in the capacity of the land to absorb and hold water and suitable soils are available for a sewage disposal system if sewage is to be disposed on-site; and
- e. the proposal is otherwise in conformance with the Commission's laws and the regulations, standards and plans, including the Commission's Comprehensive Land Use Plan, adopted pursuant thereto.

Based upon the above Findings, the staff concludes that:

- 1. The proposed subdivision is in conformance with Section 10.21.H.3.c(13) of the Commission's Land Use Districts and Standards, in that Level 1 subdivisions are an allowed use within the D-RS Residential Development Subdistrict with a permit.
- 2. The proposal complies with the approval criteria under the Commission's Statutes, 12 M.R.S.A. Section 685-B (4). Specifically, the Commission concludes that:
 - a. The applicant has demonstrated adequate technical and financial capacity for complying with the state's air and water pollution control laws and other applicable environmental laws. Specifically, the applicant has demonstrated technical capacity by hiring consulting and engineering firms with expertise and a broad level of experience in site evaluation and subdivision design. The applicant has also demonstrated financial capacity by submitting a corporate good standing certificate from Maine and a letter of credit from a financial institution.
 - b. The applicant has made adequate provision for loading, parking and traffic circulation in, on and from the site. The applicant has made adequate provision for driveway access points onto the subdivision roads. The pre-existing subdivision roads have an 18 foot travel surface and 3 foot shoulders, which is adequate to handle traffic within the subdivision. The applicant has shown that there is deeded access from the Hunter Hill Road.
 - c. The applicant has made adequate provision for fitting the proposal harmoniously into the existing natural environment in order to assure there will be no undue adverse effect on existing uses, scenic character, and natural and historic resources in the area. Specifically, the applicant has proposed implementation of forested buffers; development of a density similar to surrounding development; permanent protection of 1.32 acres of P-WET land, and deed restrictions pertaining to commercial and residential development.
 - d. The applicant has provided evidence that each of the subdivision lots contains adequate space and appropriate slope and soils for residential development. Specifically, a residential dwelling, sewage disposal system and driveway can be placed on each lot without causing undue erosion of soils or significant impact to wetlands, while maintaining the required road and property line setbacks and buffers. All delineated wetlands are located in areas of common ownership, thus they will not be developed.

3. The proposal is otherwise in conformance with the Commission's statutes and the regulations, standards and plans, including Subchapter III of the Commission's Land Use Districts and Standards.
4. If carried out in compliance with the Conditions below, the proposal will meet the Criteria for Approval, Section 685-B(4) of the Commission's Statutes, 12 M.R.S.A.

Therefore, the staff approves the application of Vista Development, Inc. to create a 9 lot residential subdivision subject to the following conditions:

1. The Standard Conditions (ver. 10/90), a copy of which is attached.
2. The Standards for Vegetative Clearing, Section 10.27.B of the Commission's Land Use Districts and Standards, a copy of which is attached.
3. The standards for Filling and Grading, Section 10.27.F of the Commission's Land Use Districts and Standards, a copy of which is attached.
4. The homeowner's association P-WL1 zoned common lot shall be used solely for purposes intended to conserve land and preserve important natural features of the site. The common lot shall not be further subdivided and no structures are allowed. Activities within the 250' buffer surrounding the P-WL1 shall also be limited to low-intensity recreation. Development within this buffer shall be limited to the installation of private wells to serve the residences. No cutting of trees or removal of vegetation shall be allowed as a result of the installation of these wells.
5. All septic systems shall be installed such that the bottom of each leachfield is at least 6 inches above the clean sand and gravel layer. The loamy sand will assure a bio-mat formation, provide treatment of effluent, and thereby protect the groundwater.
6. The depth of road ditches shall be limited so that they are above the seasonal water table in order to make stabilization easier and more effective.
7. If fuel oil furnaces are to be used in the homes, the home heating oil tanks are to be installed within the dwelling or in the dwelling basement.
8. The permittee must submit for Commission review, approval and signature a final plat for this subdivision which meets the Commission's specifications for subdivision plats and is acceptable for recording in the Registry of Deeds. Such plat must clearly identify all open space areas with a note thereof to indicate that no further subdivision or conversion of use is allowed.
9. The permittee must submit, for Commission review and approval, a sample deed for the subdivision lots:

Lot # _____ is part of a subdivision approved pursuant to Maine Land Use Regulation Commission Subdivision Permit SP 4055 which is recorded in the Franklin County Registry of Deeds. Use of this lot is subject to applicable conditions of that Subdivision Permit approval.

- B. Such deed must also describe any restrictions to be imposed by the permittee, and must incorporate the following additional restrictions:
- (1) No building or other such construction may be undertaken on any lot without first obtaining an approved Building Permit from the Maine Land Use Regulation Commission;
 - (2) All structures must be set back a minimum of 50 feet from all access roads and rights-of-way and a minimum of 15 feet from all other property boundary lines. In addition, all structures must be located within the boundaries of building envelopes, as designated on the subdivision plat authorized pursuant to Maine Land Use Regulation Commission Subdivision Permit SP 4055; and
 - (3) No lot shall be further divided or reconfigured without the written approval of the Maine Land Use Regulation Commission in accordance with 12 M.R.S.A. §681 et seq. and applicable requirements of the Commission.
10. Deeds conveying approved lots must incorporate the language of the sample deed as approved by the Commission.
11. Prior to the sale of any subdivision lot, the permittee must construct the subdivision roads in accordance with the design standards of this permit and the subdivision plat.
12. All areas of disturbed soil must be promptly stabilized, reseeded, and maintained in a vegetated state to prevent soil erosion.
13. Any changes to the Lot Owner Association Declaration of Covenants or Bylaws must be approved by the Commission.
14. Prior to the sale or lease of any subdivision lot and prior to the development of the "homeowners association site," the permittee must:
- (a) Record and cross-reference in the Franklin County Registry of Deeds this approved Subdivision Permit SP 4055 including Conditions of Approval and the subdivision plat signed by the Director of the Commission. Upon such recording of the permit and plat, the permittee must promptly submit to the Commission a copy of the recorded plat; the book, page and file numbers for the permit and plat; and the date of such recording.
 - (b) Incorporate a homeowners association for this subdivision. The homeowners association Bylaws and Declaration of Covenants. These Bylaws and Covenants must

be recorded and cross-referenced in the Franklin County Registry of Deeds. Upon such recording, the permittee must promptly submit to the Commission a copy of the recorded documents; the book and page numbers; and the date of such recording.

(c) Prior to the sale of any subdivision lot, the permittee must obtain a Certificate of Compliance from the Commission.


15. All provisions of Zoning Petition ZP 692 approved by the Commission remain in effect and are binding upon the permittee.

This permit is approved only upon the above stated conditions and remains valid only if the permittee complies with all of these conditions.

In accordance with 5 M.R.S.A. section 11002 and Maine Rules of Civil Procedure 80C, this decision by the Commission may be appealed to Superior Court within 30 days after receipt of notice of the decision by a party to this proceeding, or within 40 days from the date of the decision by any other aggrieved person. In addition, where this decision has been made without a public hearing, any aggrieved person may request a hearing by filing a request in writing with the Commission within 30 days of the date of the decision.

DONE AND DATED AT AUGUSTA, MAINE, THIS 27TH DAY OF NOVEMBER, 2004.

By:

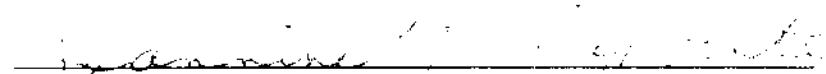

Catherine M. Carroll, Director

STATE OF MAINE
County of Kennebec, ss.

Date: 

Personally appeared the above named Catherine M. Carroll, in her capacity as Director of the Maine Land Use Regulation Commission, and acknowledged the foregoing to be her free act and deed in her said capacity and the free act and deed of the Maine Land Use Regulation Commission.

Before me,


Jeannine Y. Lapointe, Notary Public

My Commission expires September 5, 2010